

No. 24-13895

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**In the United States Court of Appeals for the Eleventh Circuit**

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UNITED FACULTY OF SAINT LEO, NATIONAL EDUCATION  
ASSOCIATION FLORIDA EDUCATION, AMERICAN FEDERATION  
OF TEACHERS, AFL-CIO,

*Petitioner,*

*v.*

NATIONAL LABOR RELATIONS BOARD,

*Respondent,*

SAINT LEO UNIVERSITY, INC.,

*Intervenor.*

On Petition for Review from the National Labor Relations Board,  
Case Nos. 12-CA-275612, 12-CA-275617, 12-CA-275639,  
12-CA-275640, 12-CA-275641, 12-CA-275642, 12-CA-1275644,  
12-CA275645, and 12-CA-284360

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**MOTION FOR LEAVE TO FILE  
BRIEF OF PROFESSOR DAVID F. FORTE AS AMICUS CURIAE  
IN SUPPORT OF INTERVENOR SAINT LEO UNIVERSITY, INC.**

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## **CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1, the undersigned counsel of record certifies that, in addition to the parties listed on the parties' Certificates of Interested Persons, the following individuals, law firms, and entities have an interest in the outcome of this appeal.

- Evanson, Blaine E. (Counsel for Amicus Curiae)
- Forte, David F. (Amicus Curiae)
- Kim, Minsoo (Counsel for Amicus Curiae)
- Lee, James R. (Counsel for Amicus Curiae)
- Anmahouni, Varant (Counsel for Amicus Curiae)
- Nestor, Branton J. (Counsel for Amicus Curiae)
- Weinberger, Lael (Counsel for Amicus Curiae)

Pursuant to 11th Cir. R. 26.1-3(b), counsel certifies that no publicly traded corporation has an interest in this proceeding.

Dated: May 20, 2025

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Respectfully submitted,

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## INTRODUCTION

Professor David F. Forte moves under Federal Rule of Appellate Procedure 29 and Eleventh Circuit Rule 29-1 for leave to file the attached amicus curiae brief in support of Intervenor Saint Leo University. An accomplished scholar, Professor Forte has written and taught extensively on the United State Constitution, the Bill of Rights, and religious liberty. His amicus brief draws on current scholarship and First Amendment caselaw to provide insight and perspective relevant to the relationship of the NLRB proceedings to the broader law of the Religious Clauses—including the limits articulated by the Supreme Court in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979).

Intervenor Saint Leo University, Inc. consents to the amicus brief's filing. Respondent National Labor Relations Board opposes the amicus brief's filing. Petitioner United Faculty of Saint Leo has not responded.

## DISCUSSION

Federal Rule of Appellate Procedure 29(b) permits the filing of an amicus brief where it “will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties’ briefs.” *Voices for Choices v. Illinois Bell Telephone Co.*, 339 F.3d 542, 545 (7th Cir. 2003). Permission to file an amicus brief “should normally” be granted where “the amicus has unique information or perspec-

tive that can help the court beyond the help that the lawyers for the parties are able to provide.” *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997).

Professor David F. Forte is Emeritus Professor of Law at Cleveland State University, where he was the inaugural holder of the Charles R. Emrick, Jr.–Calfee Halter & Griswold Endowed Chair. He was also a Garwood Visiting Professor at Princeton University. Professor Forte has studied and written extensively on constitutional law, including the Religion Clauses of the United States Constitution. He was the co-editor of the second edition of the Heritage Guide to the Constitution, an important reference work on historical and originalist approaches to constitutional interpretation and scholarship. Professor Forte has an acute interest in the sound development of First Amendment law, including the church autonomy doctrine rooted in constitutional history and Supreme Court precedent. Professor Forte writes to aid this Court in interpreting and applying the constitutional protections afforded to religious institutions under our system of law.

This brief provides academic insight into the First Amendment issues at stake. Synthesizing the latest scholarship and providing original research and analysis, Professor Forte’s brief explains how *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), fits into the broader history and theory of the First Amendment’s Religion Clauses. His brief seeks to assist this Court in applying the NLRB-specific precedent in

ways that will accord with relevant broader principles of religious liberty developed in Supreme Court caselaw.

### CONCLUSION

Given his expertise in constitutional law and the First Amendment, Professor Forte respectfully moves to file a brief as amicus curiae. A copy of the proposed brief is attached to this motion.

Dated: May 20, 2025

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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation set forth in Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(a)(5) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 11th Cir. R. 32-4, this brief contains 491 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 MSO in 14-point Century Schoolbook font.

/s/ Blaine H. Evanson

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*Counsel for Amicus Curiae*  
*Professor David F. Forte*



### **CERTIFICATE OF SERVICE**

I certify that on May 20, 2025, I electronically filed the foregoing motion to with the Clerk of Court via the Court's CM/ECF system. I further certify that all counsel of record are registered CM/ECF users and were served through the CM/ECF system.

/s/ Blaine H. Evanson

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